

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT GALLEGOS, SR.,

Petitioner,

No. CIV S-04-2741 MCE GGH P

vs.

D. K. SISTO, Warden,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding with appointed counsel, filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent filed, on December 12, 2006, a motion to dismiss the petition as barred by the AEDPA statute of limitations. Petitioner's motion for modification of this court's August 10, 2007, Order, setting an evidentiary hearing on the question of whether petitioner can meet his burden to demonstrate entitlement to equitable tolling, based on a claim of mental illness or incompetency, came on for hearing on November 29, 2007. Stephanie Adraktas represented petitioner; Alison Alemán appeared on behalf of respondent.

At the hearing, petitioner's counsel clarified that she had brought the motion for modification based on her concern that petitioner was being restricted solely to presenting evidence showing that he suffered from mental incompetence that could not have met the

1 standard for competency to proceed with trial. However, while the court made clear that
2 petitioner's motion would be denied insofar as petitioner sought a different standard for a
3 determination of mental competency, the undersigned informed counsel for petitioner that
4 evidence going to petitioner's mental and physical capacity, or lack thereof, for the purpose of
5 demonstrating the requisite "extraordinary circumstances," during the relevant period, as well as
6 evidence of the effect of medications he may have been prescribed, was not prohibited by the
7 order at issue.

8 In addition, the court reaffirmed that the hearing set for February 4, 2008, at 9:00
9 a.m. remained in effect, as did the deadlines previously set forth for the provision of witness lists
10 and exhibits, etc., set forth in the August 10, 2007, Order. As to the date of the hearing,
11 however, petitioner subsequently filed an unopposed motion to re-schedule the evidentiary
12 hearing due to scheduling difficulties for petitioner's retained expert witness.

13 Accordingly, IT IS ORDERED that:

14 1. Petitioner's August 24, 2007, motion for modification of the court's August
15 10, 2007, Order, to the extent that petitioner seeks a change of the requisite standard to determine
16 mental competency, is denied; and

17 2. Petitioner's unopposed request, filed on November 29, 2007, to re-schedule the
18 evidentiary hearing is granted; the February 4, 2008, hearing date is vacated; and the evidentiary
19 hearing is re-set to commence on Monday, April 14, 2008, at 9:00 a.m., in Courtroom 24.

20 DATED: 12/5/07

21 /s/ Gregory G. Hollows

22 _____
GREGORY G. HOLLOWES
UNITED STATES MAGISTRATE JUDGE

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